

From: Bob Dehnhardt
To: 'microsoft.atr(a)usdoj.gov'
Date: 1/23/02 1:51pm
Subject: Microsoft Settlement

I wish to record my objections to the Proposed Final Judgment under the Tunney Act in Microsoft Antitrust Case.

The PFJ fails to completely address many areas of conduct which Microsoft has employed to abuse and enhance their monopoly. Half-measures are being taken in many cases which leave glaring loopholes that will allow Microsoft to continue their "business as usual" stance.

One area where this is the case is the Barrier to Entry. The PFJ appears to address this section well, forbidding retaliation against OEMs, ISVs and IHVs who chose to offer or support alternatives to Windows, and ensuring that Windows allows for the use of non-Microsoft middleware applications. However, this section falls short by not providing for a competing operating system that could run Windows applications. Indeed, sections III.D and III.E enhance Microsoft's monopoly in the desktop OS by restricting release of information on Windows APIs to "the sole purpose of interoperating with a Windows Operating System Product". This effectively precludes the existence of a competitive operating system that can work with Windows applications, and guarantees a continued Microsoft desktop monopoly. This combined with Section III.A.2, which allows Microsoft retaliation against OEMs that ship PC containing a competing OS but no Microsoft OS, amounts to no change in the Microsoft desktop monopoly whatsoever.

The PFJ also limits its scope to Microsoft Windows 2000 Professional, XP Home, XP Professional, and their successors, all of which run on Intel-compatible processors. This appears to ignore the Windows server editions, as well as Windows versions written for other processors, namely Windows CE and Windows XP Tablet PC Edition. As handheld and tablet devices become more widely used and available, Microsoft's interest and presence will be felt more strongly. Their own website makes mention of this fact at <http://www.microsoft.com/windowsxp/tabletpc/tabletpcqanda.asp> <<http://www.microsoft.com/windowsxp/tabletpc/tabletpcqanda.asp>> , noting

"The Tablet PC is the next-generation mobile business PC, and it will be available from leading computer makers in the second half of 2002. The Tablet PC runs the Microsoft Windows XP Tablet PC Edition and features the capabilities of current business laptops, including attached or detachable keyboards and the ability to run Windows-based applications." By failing to address this area, the PFJ is again handing Microsoft an unrestricted monopoly for its operating system suite.

Finally, there is no effective enforcement system in the PFJ. The proposed Technical Committee has investigative powers, but enforcement is left to the judicial system, which as this case has shown, can take years in trials and appeals before a final judgment is reached. To a company with deep pockets for legal fees, and a large legal staff, this is no deterrent at all.

I urge you to re-read the Findings of Fact, look at the Barriers to Entry that were found to exist, at Microsoft's business practices vis-à-vis retaliation against and pressure on OEMs, ISVs and IHVs, at Microsoft's anticompetitive business and development practices, and do not issue a PFJ until each finding has been fully and completely addressed.

For a far more comprehensive assessment of the PFJ, I urge you to look at <http://www.kegel.com/remedy/remedy2.html>
<<http://www.kegel.com/remedy/remedy2.html>> .

Thank you for your consideration.

- Bob

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